

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

SHAUDY ONASIS ALVEAR,
Petitioner.

No. 2 CA-CR 2016-0116-PR
Filed June 29, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED FOR PERSUASIVE AUTHORITY.

See Ariz. R. Sup. Ct. 111(a)(3), (c);
Ariz. R. Crim. P. 31.17(b), (e), 31.24.

Petition for Review from the Superior Court in Santa Cruz County
No. S1200CR201300144
The Honorable Anna M. Montoya-Paez, Judge

REVIEW DENIED

COUNSEL

George E. Silva, Santa Cruz County Attorney
By Kimberly J. Hunley, Deputy County Attorney, Nogales
Counsel for Respondent

Law Offices of Thomas E. Higgins, P.L.L.C., Tucson
By Thomas E. Higgins
Counsel for Petitioner

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DECISION ORDER

Presiding Judge Vásquez authored the decision order of the Court, in which Chief Judge Eckerstrom and Judge Miller concurred.

V Á S Q U E Z, Presiding Judge:

¶1 Petitioner Shaudy Alvear seeks review of the trial court's order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Because we conclude Alvear's claim is moot, we deny review.

¶2 Pursuant to a plea agreement, Alvear was convicted of attempted unlawful use of a means of transportation. The trial court suspended the imposition of sentence and placed Alvear on a three-year term of probation. Alvear thereafter admitted having violated the terms of his probation, and the court imposed an aggravated, two-year term of imprisonment.

¶3 Alvear initiated a proceeding for post-conviction relief, arguing his sentence was unlawful because the trial court had not found any enumerated aggravating factors, had "double counted [his] probationary status," and had not "properly consider[ed] the mitigating factors" he presented. The court summarily denied relief.

¶4 On review, Alvear repeats his claims made below. This court, however, ordered Alvear and the state to file memoranda addressing whether the claims were moot. The state argued Alvear's claims were moot because he completed his sentence for the offense on March 25, 2016, days before he filed his petition for review. Alvear, in contrast, asserted he was "still in custody with his maximum date of release for this offense being July 7, 2010." The Arizona Department of Corrections indicates that although Alvear's

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“Flat Maximum” date for this offense is July 7, 2016, his sentence expired on March 25, 2016. The record before us does not show that the trial court imposed a flat-time sentence.

¶5 Alvear has not asserted that his sentencing claims can survive based on a term of community supervision, *see* A.R.S. § 41-1604.07(D) (prisoner who reaches “sentence expiration date shall be released to begin the prisoner’s term of community supervision imposed by the court”); *State v. Cowles*, 207 Ariz. 8, ¶ 9, 82 P.3d 369, 371 (App. 2004) (“Community supervision is not equivalent to imprisonment.”), nor has he raised any other argument that his sentences otherwise impact his current incarceration, which appears to be based on a consecutive sentence. We therefore conclude his sentencing claims are moot. *See State v. Hartford*, 145 Ariz. 403, 405, 701 P.2d 1211, 1213 (App. 1985); *see also Cardoso v. Soldo*, 230 Ariz. 614, ¶ 5, 277 P.3d 811, 814 (App. 2012) (“[G]enerally, we will dismiss an appeal as moot when our action as a reviewing court will have no effect on the parties.”).

¶6 We therefore deny the petition for review.